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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM 1972

No. 72-333

JAMES H. BIBLE,

Petitioner

versus

CHEVRON OIL COMPANY, ET AL.,

Respondents

BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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MAY IT PLEASE THE COURT:

ARGUMENT IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

Petitioner was injured in an accident that occurred on a fixed oil platform located in the Gulf of Mexico within the seaward boundary of the State of Louisiana. Suit was filed in the United States District Court for the Eastern District of Louisiana six months following the expiration of the Louisiana prescriptive period. Summary Judgment was granted in the District Court and that decision was affirmed

by the United States Court of Appeals for the Fifth Circuit. The decisions of both of the Courts below are clearly based upon well established principles by which the interface between maritime and non-maritime torts has been traditionally defined.

The rule of law applied in the case of petitioner was no different from that applied in T. Smith & Son v. Taylor, 1928, 276 U.S. 179, 48 S.Ct. 228, 72 L.Ed. 520, when a death action was brought by the heirs of a decedent who, while standing on a wharf, was struck by a sling and knocked into the water. The claim that was asserted was exclusively for the death that had occurred in the water, but the Court said:

> "...the blow by the sling was what gave rise to the cause of action. It was given and took effect while deceased was upon the land. It was the sole, immediate and proximate cause of his death."

Similarly, when a disembarking passenger fell from a gangplank to a dock, the action was held to be maritime because it "arose from the breach of duty owing to her while she was still on the ship and using its facility for disembarking." The Admiral Peoples, 1935, 295 U.S. 649, 652, 55 S.Ct. 885, 887.

The decision rendered on June 9, 1969, in Rodrigue v. Aetna Casualty & Surety Co., 395 U.S. 352, 89 S.Ct. 1835, did not alter the firmly established jurisprudence that governs the instant case. Although the holding in Rodrigue has upset that line of cases including Pure Oil v. Snipes, 5 Cir. 1961, 293 F.2d 60 and its progeny, Movible Offshore v. Ousley, 5 Cir. 1965, 346 F.2d 870; Ocean

Drilling & Exploration Co. v. Berry Bros. Oilfield Service, 5 Cir. 1967, 377 F.2d 511; and Loffland Bros. v. Robert, 5 Cir. 1968, 386 F.2d 540, the pruning of that branch of jurisprudence has had the effect of destroying the significance of the distinction between the Snipes line of cases and those forming the limb to which this case clearly belongs.

In Snipes, supra, maritime law was applied in an accident that occurred on a fixed structure because that structure was located on the Outer Continental Shelf. The significance of the location of the platform was clearly called to attention when the Court said:

> "...we have a question whether Congress may treat an occurrence in this geographical area as substantially maritime even though on traditional lines an event taking place on a structure fixed permanently to the bed of the water might be regarded as non-maritime." (Emphasis supplied).

After pointing out the distinctions involved in the jurisdictional borderline cases including T. Smith & Son v. Taylor, supra, and The Admiral Peoples, supra, the Court expressly defined the limit of its holding in Snipes when it said:

> "But whether the injuries...as an academic inquiry on maritime or non-maritime jurisdiction, constitute a maritime injury under the historic standard of 'the substance and consummation of the occurence which gave rise to the cause of

> action' is not decisive. This is so because the 'Outer Continental Shelf Lands Act' itself reveals that when it is Federal,not adjacent state law to apply, Congress adopted maritime standards." Pure Oil v. Snipes, supra, at p. 65, 66.

The holding in Rodrigue, supra, did not establish a new principle of law applicable to the case of James Bible, nor did it overrule any past precedent that might reasonably have been relied upon by petitioner. The alleged reliance by petitioner upon Pure Oil v. Snipes can hardly be considered reasonable when such reliance must disregard the expressed limitations contained in that decision.

Because petitioner's case does not possess the important characteristics upon which the holding in Snipes and its progeny are quarely based--the location of the platform on the Outer Continental Shelf--the decision in Rodrigue, supra, serves only to reaffirm and extend the law that governs the instant case.

It is respectfully submitted that the reinstatement of Mr. Bible's case by extension of the non-retroactivity holding in Chevron Oil Co. v. Huson, 1971, 404 U.S. 97, as urged by petitioner would constitute a clear denial of respondent's right to the prospective application of that great body of jurisprudence upon which this Court's decision in Rodrigue, supra, is based.

The Petition for Writ of Certiorari should, therefore, be denied.

Respectfully submitted,

MOUTON, ROY, CARMOUCHE, HAILEY, BIVINS & McNAMARA

BY: _____

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CERTIFICATE

I hereby certify that a copy of the foregoing Brief in Opposition to the Petition for Writ of Certiorari has been served upon John R. Martzell and Frank C. Allen, Jr. by depositing copies of same in the United States Mails, postage prepaid, addressed to their respective offices.

Metairie, Louisiana, this _____day of September, 1972.

_____

A. J. McNAMARA